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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,222	01/09/2006	Timothy Ralston Lang	DAVI256.001APC	3349

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER	
KRAUSE, ANDREW E	

ART UNIT	PAPER NUMBER
4152	

NOTIFICATION DATE	DELIVERY MODE
12/10/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary	Application No.	Applicant(s)	
	10/537,222	LANG ET AL.	
	Examiner	Art Unit	
	ANDREW KRAUSE	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *11-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10/26/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 11-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected apparatus, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/14/2008.

Claim Objections

2. Claim 1 is objected to because of the following informalities: In line 5, 'Adding said secondary juice from said primary juice' should be changed to 'adding said secondary juice to said primary juice'. Appropriate correction is required.

3. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1,4,6, and 8** are rejected under 35 U.S.C. 102(b) as being anticipated by Klingner (WO 99/06526).

6. **Regarding claim 1,**Klingner discloses a method of processing plant material residue remaining after primary juice has been extracted from the plant material (marc, the grape material left after juice extraction), said method comprising the steps of:

a. Extracting, using diffusion extraction, a liquid portion from said plant material residue (page 5, lines 18-26, water is added to grape marc to extract dissolved and suspended materials);

b. Fractioning secondary juice from said liquid portion (page 5 lines 23-26, the juice is fraction by a variety of means, such as filtration,centrifuge, and evaporation); and

c. Adding said secondary juice to said primary juice (it is disclosed on page 2, lines 8-11, that the secondary extract juice can be used as an additive to improve wine, or to add to the original juice from the grapes).

7. **Regarding claim 4**, Klingner discloses removing water from the liquid portion in the fractionation step to obtain the secondary juice (page 6, lines 12-14).

8. **Regarding claim 6**, Klingner discloses that the plant material is marc, which is fermented ([0007] of PGPUB of applicants disclosure) and said fractioning step removes a water and alcohol mixture from said liquid portion to obtain said secondary juice

(page 3, linees 30-31), said method comprising the further step of splitting said water and alcohol mixture into at least alcohol and water (page 3, lines 30-37, the components obtained from the splitting are water, alcohol, and the essences and aromas).

9. **Regarding claim 8**, Klingner discloses mixing the extracted secondary juice components back with the recovered alcohol (page 3, lines 35-38).

10.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. **Claims 2-3,5,9,and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingner.

15. **Regarding claims 2 and 3**, Klingner discloses that the diffusion extraction of claim 1 uses water as an extraction liquid (page 5, lines 18-26), and further discloses

d. Recovering water from a solid portion remaining after said liquid portion is extracted (page 5, lines 20-26, the water is then recovered via evaporation (page 6, lines 12-18).

16. **Regarding claims 5 and 9,** Klingner discloses the method according to claim 4.

17. However, with regard to each claim, Klingner fails to explicitly disclose recycling the recovered water as the extraction liquid.

18. However, Klingner discloses that the water used for the extraction should be "derived from a grape source" (page 5, line 20). Therefore it would have been obvious to use the recovered water (derived from a grape source) as the extractant liquid because all claimed elements were known at the time of the invention, and could have been combined with no change in their respective functions to yield predictable results to one of ordinary skill in the art.

19. **Regarding claim 10,** Klingner discloses recovering tartrate crystals from the liquid (page 3, lines 25-30).

20. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Klingner in view of Siemann and Creasy ("Concentration of the Phytoalexin Resveratrol in Wine").

21. Klinger discloses that said plant material residue is from red wine grapes (page 1, lines 6-8).

22. Klingner fails to explicitly disclose a step that removes resveratrol from said juice portion.

23. However, Siemann and Creasy disclose a method of fully extracting resveratrol from wine products (materials and methods).

24. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Klingner with the addition of a fractionation step as disclosed by Siemann and Creasy to remove the resveratrol present in the juice of the

red wine grape residue because isolated resveratrol can be used as a medical treatment for various disorders, and it is believed that that resveratrol derived from wine can have similar effects (column 1, last paragraph of Siemann and Creasy).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/
Examiner, Art Unit 4152

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 4152